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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,457	08/21/2003	Aurelian Bruneau	400-23244/PC771.00	7972

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EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3733

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,457

Applicant(s)

BRUNEAU ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 21-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/21/03, 5/24/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicant's election without traverse of Group I claims 1-20 in the reply filed on 5/22/06 is acknowledged. However, applicant stated that claim 1 is generic, but this is not found to be persuasive. In Group I (claim 1), applicant is only claiming a guiding member; in Group II, (at least claim 21) applicant is claiming a combination of an implant, a bone anchor and a guiding member; in group III (claim 64) applicant is claiming a combination of a bone anchor, a guiding member and a removal tool. Applicant is therefore claiming three distinct inventions and no claim is generic.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10-14, 19, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Brumfield et al. (6,235,028).

With respect to claims 1 and 10, Brumfield et al disclose a device for guiding an implant to a location adjacent a bone anchor comprising: a guide member (12) including a connecting portion (16) and a guiding portion (14), wherein with the connecting portion adjacent the bone anchor said guiding portion extends proximally from the connecting portion and is adapted to receive the implant wherein the guiding portion is flexible and movable to any one of a plurality of orientations relative to the

Art Unit: 3733

anchor as the implant is guided there along, the connecting portion includes a body comprising a tapered portion forming a substantially uniform transition between the anchor and the guiding portion; as set forth in column 3, lines 42-67, column 4, lines 1-6, lines 17-27, column 5, lines 16-61, column 10, lines 38-67, column 11, lines 9-38; and as best seen in FIGS.1-7.

With respect to claims 2-5, 11-14,19,20, Brumfield et al disclose all the limitations, as set forth in column 3, lines 42-67, column 4, lines 1-6, lines 17-27, column 5, lines 16-61, column 10, lines 38-67, column 11, lines 9-38; and as best seen in FIGS.1-7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brumfield et al (6,235,028) in view of Sevrain et al. (6,589,244).

It is noted that Brumfield et al did not teach of a connecting portion including a pair of extensions to releasably engage with the bone anchor; as claimed by applicant. However, in a similar art, Sevrain et al evidence the use of an insertion instrument with a pair of extension to releasably fasten and secure a fastener.

Therefore, given the teaching of Sevrain et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Brumfield et al, as taught by Sevrain et al to releasably fasten and secure an anchor.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,746,454

6-2004

Winterbottom et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
July 27, 2006



PEDRO PHILOGÈNE
PRIMARY EXAMINER